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12 AMERICAN NATIONAL INSURANCE COMPANY

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 DAPHNE P. RAND, by and through DEBRA J.) Case No.: CV09-0639 SI
17 DOLCH, as Conservator of the Person and Estate)
of DAPHNE P. RAND, Conservatee, on Behalf of)
Themselves and All Others Similarly Situated,)
18 Plaintiff,)
19 v.)
20 AMERICAN NATIONAL INSURANCE)
COMPANY, a Texas corporation,)
21)
22 Defendant.)
23)

[PROPOSED] ORDER GRANTING
DEFENDANTS' REQUEST FOR
ENTRY OF SUMMARY JUDGMENT
AND STRIKING PLAINTIFF'S
SUPPLEMENTAL CITATION

24 On November 5, 2010, Defendant American National Insurance Company ("ANICO")
25 sought leave of Court to file a motion for reconsideration of the Court's September 29, 2010
26 Order regarding the parties' cross-motions for partial summary judgment. (Docket No. 156).
27 Specifically, ANICO sought reconsideration of (1) the Court's conclusion that the issue of

[PROPOSED] ORDER GRANTING DEFENDANTS' REQUEST FOR ENTRY OF SUMMARY
JUDGMENT AND STRIKING PLAINTIFF'S SUPPLEMENTAL CITATION

1 Plaintiff's standing under the UCL was not raised and presented for disposition in the summary
 2 judgment motions, and (2) the Court's denial of summary judgment in ANICO's favor on
 3 Plaintiff's claim that ANICO violated California Insurance Code § 10509.4.

4 On December 3, 2010, the Court issued an Order denying ANICO's motion for leave to
 5 file a motion for reconsideration. (Docket No. 160). As to the question of Plaintiff's failure to
 6 demonstrate standing under the UCL, the Court directed the parties to address standing and
 7 causation in connection with the class certification or other appropriate motions.

8 With respect to Plaintiff's § 10509.4 claim, the Court directed Plaintiff "to file evidence
 9 in support of the remainder of the § 10509.4 claim no later than **January 14, 2011.**" (*Id.* at 3)
 10 (emphasis in original). If, as ANICO contended, Plaintiff was unable to adduce any such
 11 evidence, the Court directed Plaintiff to file a statement to that effect and the Court would grant
 12 summary judgment in favor of ANICO. (*Id.*)

13 On January 14, 2011, Plaintiff failed to provide the Court with any evidence in support
 14 of the remainder of the § 10509.4 claim. Nor did Plaintiff file a statement admitting that she
 15 was unable to adduce any such evidence. Instead, Plaintiff improperly filed a "Supplemental
 16 Citation" and attached a recent state court opinion that is not relevant to the § 10509.4 claim.
 17 (Docket No. 165).

18 Accordingly, the Court GRANTS ANICO's request for entry of summary judgment in
 19 its favor and against Plaintiff on the entirety of Plaintiff's § 10509.4 claim. The Court finds that
 20 (1) ANICO did not violate California Insurance Code § 10509.4 in the sale of Plaintiff's
 21 annuities; and (2) Plaintiff may not predicate her first claim for relief, brought under
 22 California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, on ANICO's
 23 alleged violation of California Insurance Code § 10509.4.

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[PROPOSED] ORDER GRANTING DEFENDANTS' REQUEST FOR ENTRY OF SUMMARY
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In addition, because Plaintiff's Supplemental Citation is not evidence in support of the remainder of the § 10509.4 claim, nor a statement that Plaintiff was unable to adduce any such evidence, the Court GRANTS ANICO's request to strike Plaintiff's Supplemental Citation from the record.

IT IS SO ORDERED

Dated: 2/2/11

Susan Ilston

SUSAN ILLSTON
United States District Judge